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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/051,994	01/22/2002	Armando R. Lopez		9169

7590 02/05/2003
Evelyn M. Sommer
30th Floor
825 Third Avenue
New York, NY 10022

EXAMINER

LAMM, MARINA

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 02/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/051,994

Applicant(s)

LOPEZ, ARMANDO R.

Examiner

Marina Lamm

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claims 1-18 are pending in this application filed 1/22/02.

Claim Objections

1. Claim 15 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 15 recites the same concentration range as the base claim 1.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4, 6-12, 14, 15, 17 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Noll et al. (US 5,725,875).

Noll et al. teach protective skin compositions in the form of suspensions, emulsions, lotions, ointments and aerosol gels which form a film on the skin effective as a topical barrier, said film being easily removable with water. See col. 2, lines 25-45; col. 3, lines 18-24, 43-46; col. 14, line 40; col. 17, lines 52-67. The compositions of Noll et al. contain 15-40% of alkali metal fatty acid (e.g. sodium laurate) which inherently possesses surface-active properties. See Abstract. The compositions also contain glycerin as an emollient and may

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contain sunscreens. See Abstract. When the compositions of Noll et al. are formulated as ointments, they may contain oleaginous substances. See col. 17, lines 64-66; col. 9, line 19.

Thus, Noll et al. teach each and every limitation of Claims 1-4, 6-12, 14, 15, 17 and 18.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Noll et al. in view of Kelly et al. (US 3,961,044).

Noll et al. applied as above. When the compositions of Noll et al. are formulated as ointments, they may contain oleaginous substances. See col. 17, lines 64-66.

The reference does not explicitly teach lipids of Claim 13. However, such lipids are conventionally used in skin care compositions. Thus, Kelly et al. teach skin protective compositions in the form of creams and lotions containing beeswax, mineral oil, cetyl alcohol, lanolin and other cosmetic substances. See col. 7, lines 1-26; col. 10, Examples 2 and 3.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the claimed invention was made to use lipids of Kelly et al. for compositions of Noll et al. with for their art-recognized purpose.

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6. Claims 5 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Noll et al. in view of Guck (EP 626167).

Noll et al. applied as above. The reference does teach the claimed lathering surfactants. However, lathering surfactants are known in the art of cosmetic compositions. Thus, Guck teaches compositions for skin protection comprising foaming surfactants. See English Abstract.

One of ordinary skill would have been motivated to substitute the surfactant of Noll et al. for the lathering surfactant of Guck with a reasonable expectation of beneficial results such as easier removal of the compositions from the skin.

Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 6,309,656 discloses cosmetic and skin protective compositions comprising a germicidal surfactant.

8. No claim is allowed at this time.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marina Lamm whose telephone number is (703) 306-4541.

The examiner can normally be reached on Monday to Friday from 9 to 5.

The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

ml
1/26/03


JOSE G. DEES
SUPERVISORY PATENT EXAMINER

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